

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

WESLEY L. MAXWELL,

Petitioner,

v.

No. CIV-04-0994 JH/ACT

JAMES JANECKA, WARDEN, et al.

Respondents.

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Petitioner's Summary Judgment (Doc. 25), construed herein as a second motion to reopen. *See Burns v. C.I.A.*, No. 93-5153, 1994 WL 36770, at **1 (10th Cir. 1994). The motion will be denied.

As a starting point, “[a] party should not be allowed to force a District Court to consider for a third time arguments previously made.” *Jetero Const. Co., Inc. v. South Memphis Lumber Co., Inc.*, 531 F.2d 1348, 1352 (6th Cir. 1976) (vacating an amended judgment based on a second Rule 59 motion). Furthermore, this Court is constrained by the Tenth Circuit’s ruling, *see Colorado Interstate Gas*, 962 F.2d at 1534; *Ramey*, 673 F.2d at 318, which did not order remand or issue any ministerial dictates, *see Maxwell v. Janecka*, 191 F. App’x 717, 718 (10th Cir. 2006).

Even though there was no remand from Petitioner’s appeal, he alleges that the Tenth Circuit ordered the New Mexico Attorney General to review his good time credits. A copy of the Tenth Circuit’s order denying rehearing is attached to Petitioner’s motion. As the court states, “We are confident that the New Mexico Attorney General will review this matter to be certain that Mr. Maxwell’s credits were properly calculated.” *Maxwell v. Janecka*, No. 05-2060, slip ord. (10th Cir.

Oct. 11, 2006). This is not ordering language, and the Court may not reexamine Petitioner's claims.

The motion will be denied.

IT IS THEREFORE ORDERED that Petitioner's Summary Judgment (Doc. 25), construed herein as a motion to reopen, is DENIED.



UNITED STATES DISTRICT JUDGE